

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of  
Application No. 2004-01

WIND RIDGE POWER PARTNERS,  
L.L.C.

WILD HORSE WIND POWER  
PROJECT

FRIENDS OF WILDLIFE AND  
WIND POWER'S BRIEF IN  
OPPOSITION TO F. STEVEN  
LATHROP'S PETITION FOR  
INTERVENTION

A. Introduction

Friends of Wildlife and Wind Power ("Friends") hereby oppose the intervention of Steven Lathrop. Friends joins in the Wind Ridge Power Partners' Brief in Opposition to F. Steven Lathrop's Petition for Intervention and supplements that herein with a short summary of the legal reasons why Mr. Lathrop's request should be denied.

B. The Legal Standard for Intervention

The legal standard for the Energy Facility Site Evaluation Council's (the "Council") decision regarding intervention requires that intervention be allowed only to persons who can show that they have an interest in the subject matter and that their ability to protect such

FRIENDS OF WILDLIFE AND WIND POWER'S  
BRIEF IN OPPOSITION TO F. STEVEN LATHROP'S  
PETITION FOR INTERVENTION - 1

**Bricklin Newman Dold, LLP**  
Attorneys-at-Law  
Fourth and Pike Building  
1424 Fourth Avenue, Suite 1015  
Seattle, WA 98101-2217  
Tel. (206) 621-8868  
Fax (206) 621-0512

1 interest may be otherwise impaired or impeded. WAC 463-30-400. The Council's rule on  
2 intervention states:

3           On timely application in writing to the council, intervention  
4 shall be allowed to any person upon whom a statute confers  
5 a right to intervene and, in the discretion of the council, to  
6 any person having an interest in the subject matter and whose  
7 ability to protect such interest may be otherwise impaired or  
8 impeded. All petitions to intervene shall . . . establish with  
9 particularity an interest in the subject matter and that the  
10 ability to protect such interest may be otherwise impaired or  
11 impeded. In exercising discretion . . . , the council shall  
12 consider whether intervention by the petitioner would unduly  
13 delay the proceeding or prejudice the rights of the existing  
14 parties. . . .

15 WAC 463-30-400. In the past, the Council has explained that the term "interest is not used  
16 in the sense of 'being interested,' but in the sense of having a legal as opposed to  
17 philosophical interest that the intervention will afford an opportunity to protect. . . . The rule  
18 places the burden on the petitioner to establish its interest 'with particularity,' that is, clearly  
19 and specifically, and to establish that the failure to allow intervention could impair that  
20 interest." In re: Application No. 96-1 of Olympic Pipeline Company, Pre-Hearing Order  
21 No. 3 at 2 (Aug. 15, 1996), citing KVA Resources, Pre-Hearing Order No. 3 at 8.

22           In applying the term "interest" to specific facts, it is useful to look to and rely upon  
23 APA standing case law for the reasons expressed by Wind Ridge Power Partners in its  
24 opposition brief. See Wind Ridge Power Partners' Brief in Opposition to F. Steven  
25 Lathrop's Petition for Intervention. Wind Ridge has provided a summary of relevant case  
26 law in that regard and Friends incorporates that legal summary herein.

1 C. Mr. Lathrop Does Not Meet the Legal Standard for Intervention

2 In his petition for intervention, Steven Lathrop failed to show a legal interest in the  
3 subject matter which could be adversely affected by the project in a direct and substantial  
4 way. The sole interests in the subject matter that Mr. Lathrop claims are general impacts  
5 on land values, precedent for the future, and views from his residence. See Petition for  
6 Intervention of F. Steven Lathrop (Sep. 7, 2004); F. Steven Lathrop's Brief in Support of  
7 the Petition for Intervention of F. Steven Lathrop (Oct. 7, 2004).  
8

9 The first two interests listed above -- general impacts on land values and precedent  
10 for the future -- are hypothetical, are unsupported by the evidence, and do not constitute a  
11 legal interest. As we learned in Trepanier v. Everett, 64 Wn. App. 380, 382-83, 824 P.2d  
12 524 (1992), review denied, 119 Wn.2d 1012 (1992), an unsupported assumption of some  
13 speculative impact from a project does not constitute specific legal harm. Similarly, in  
14 Coughlin v. Seattle School District, 27 Wn. App. 888, 893 (1980), general claims of interest  
15 in diminished value of property that are shared with the community in general are  
16 insufficient to show a legal interest. Also insufficient is a general hypothetical claim that the  
17 action at issue may cause future precedent. Id. Mr. Lathrop's claims not only fail for lack  
18 of evidence to support them (he provides no evidence to support these claims despite that he  
19 has the burden of proof), but they are based on general impacts shared by the community  
20 and are therefore not interests specific to him.  
21

22 With respect to the third claim by Mr. Lathrop -- the claim that his view would be  
23 impacted -- the evidence fails again. Quite to the contrary of his claim, Mr. Lathrop's view  
24

1 will not be impacted. See Declaration of Arne Nielsen in Opposition to the Intervention  
2 Request of F. Steven Lathrop. Not surprisingly (since it is not the case), Mr. Lathrop  
3 provided no evidence to show that his view would be impacted, no detail on exactly how it  
4 would be impacted, and no information about how far away he lives from the project. The  
5 Applicant's evidence in response shows that Mr. Lathrop's property is 19 miles away from  
6 the proposal site and his view will not be impacted.  
7

8 Overall, the sole claims of interest that Mr. Lathrop has vaguely made in his petition  
9 and brief in support thereof simply do not rise to the standard required by law.  
10

11 D. Conclusion

12 Mr. Lathrop has simply not met his burden to intervene in this matter and Friends  
13 respectfully requests that the Council deny his petition to intervene.  
14

15 Dated this 14<sup>th</sup> day of October, 2004.

16 Respectfully submitted,

17 BRICKLIN NEWMAN DOLD, LLP  
18

19 By: s/ Claudia M. Newman  
20 Claudia M. Newman  
21 WSBA No. 24928  
22 Attorneys for Friends of Wildlife and  
Wind Power

23 FOWWP\Opposition to Lathrop's Intervention  
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DECLARATION OF SERVICE

STATE OF WASHINGTON       )  
  )  
COUNTY OF KING            )       ss.

I, DANIEL P. DRAHEIM, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am the legal assistant for Bricklin Newman Dold, LLP, attorneys for Friends of Wildlife and Wind Power herein. On the date and in the manner indicated below, I caused the Friends of Wildlife and Wind Power’s Brief in Opposition to F. Steven Lathrop’s Petition for Intervention to be served on:

**Bricklin Newman Dold, LLP**  
Attorneys-at-Law  
Fourth and Pike Building  
1424 Fourth Avenue, Suite 1015  
Seattle, WA 98101-2217  
Tel. (206) 621-8868  
Fax (206) 621-0512

DECLARATION OF SERVICE - 1

1 Allen J. Fiksdal  
2 EFSEC Manager  
3 Washington State Energy Facility Site  
4 Evaluation Council  
5 P.O. Box 43172  
6 925 Plum Street SE  
7 Olympia, WA 98504-3172  
8 (360) 956-2252 - Ph.  
9 (360) 956-2158 - Fx.  
10 [allenf@ep.cted.wa.gov](mailto:allenf@ep.cted.wa.gov)

11 [x] By United States Mail  
12 [ ] By Legal Messenger  
13 [ ] By Facsimile  
14 [ ] By Federal Express/Express Mail  
15 [x] By E-mail

16 Darrel Peeples  
17 325 Washington Street NE #440  
18 Olympia, WA 98501  
19 (360) 943-9528 - Ph.  
20 (360) 943-1611 - Fx.  
21 [dpeeples@ix.netcom.com](mailto:dpeeples@ix.netcom.com)  
22 (Attorney for Wind Ridge Power  
23 Partners, L.L.C.)

24 [x] By United States Mail  
25 [ ] By Legal Messenger  
26 [ ] By Facsimile  
27 [ ] By Federal Express/Express Mail  
28 [x] By E-mail

Tony Usibelli, Director  
Energy Division  
Department of Community, Trade and  
Economic Development  
PO Box 43173  
Olympia, WA 98504-3173  
(360) 956-2125 Ph  
(360) 956-2180 Fx  
[Tonyu@ep.cted.wa.gov](mailto:Tonyu@ep.cted.wa.gov)

[x] By United States Mail  
[ ] By Legal Messenger  
[ ] By Facsimile  
[ ] By Federal Express/Express Mail  
[x] By E-mail

Jeff Slothower  
Lathrop, Winbauer, Harrel, Slothower &  
Denison L.L.P.  
Attorneys at Law  
P.O. Box 1088  
201 West Seventh Avenue  
Ellensburg WA 98926  
(509) 925-6916 Ph  
(509) 962-8093 Fx  
[jslothower@lwahsd.com](mailto:jslothower@lwahsd.com)

[x] By United States Mail  
[ ] By Legal Messenger  
[x] By Facsimile  
[ ] By Federal Express/Express Mail  
[x] By E-mail

1 Timothy L. McMahan  
2 Stoel Rives LLP  
3 805 Broadway Street, Suite 725  
4 Vancouver, WA 98660  
5 (360) 699-5900 - Ph.  
6 (360) 699-5899 - Fx.  
7 [tlmcmahan@stoel.com](mailto:tlmcmahan@stoel.com)

8 [x] By United States Mail  
9 [ ] By Legal Messenger  
10 [ ] By Facsimile  
11 [ ] By Federal Express/Express Mail  
12 [x] By E-mail

13 Chris Taylor  
14 Zilkha Renewable Energy  
15 210 SW Morrison, Suite 310  
16 Portland, OR 97204  
17 (503) 222-9400 - Ph.  
18 (503) 222-9404 - Fx.  
19 [ctaylor@zilkha.com](mailto:ctaylor@zilkha.com)

20 [x] By United States Mail  
21 [ ] By Legal Messenger  
22 [ ] By Facsimile  
23 [ ] By Federal Express/Express Mail  
24 [x] By E-mail

25 Charles Lean  
26 Attorney at Law  
27 3035 Quince Street SE  
28 Olympia WA 98501  
(360) 669-5899 Ph  
[lean@comcast.net](mailto:lean@comcast.net)

[x] By United States Mail  
[ ] By Legal Messenger  
[ ] By Facsimile  
[ ] By Federal Express/Express Mail  
[x] By E-mail

John Lane  
Counsel for the Environment  
Attorney General's Office  
1125 Washington Street SE  
P.O. Box 40100  
Olympia, WA 98504-0100  
(360) 586-2438 - Ph.  
(360) 664-0229 - Fx.  
[johnL1@atg.wa.gov](mailto:johnL1@atg.wa.gov)

[x] By United States Mail  
[ ] By Legal Messenger  
[ ] By Facsimile  
[ ] By Federal Express/Express Mail  
[x] By E-mail

Clay White  
Kittitas County Planning  
411 N. Ruby Street, Suite 2  
Ellensburg WA 98926  
(509) 962-7506 Ph.  
(509) 962-7697 Fx.  
[clayw@co.kittitas.wa.us](mailto:clayw@co.kittitas.wa.us)

[x] By United States Mail  
[ ] By Legal Messenger  
[ ] By Facsimile  
[ ] By Federal Express/Express Mail  
[x] By E-mail

1 Debbie Strand  
2 Executive Director  
3 Phoenix Economic Development Group  
4 1000 Prospect Street  
5 P.O. Box 598  
6 Ellensburg WA 98926  
7 (509) 962-7244 - Ph  
8 (509) 962-7141 - Fx  
9 phoenix@elltel.net

7 ☒ By United States Mail  
8 ☐ By Legal Messenger  
9 ☐ By Facsimile  
10 ☐ By Federal Express/Express Mail  
11 ☒ By E-mail

11 Ann Essko, Assistant Attorney General  
12 905 Plum Street, Building 3  
13 P.O. Box 40108  
14 Olympia WA 98504-0108  
15 (360) 664-2510 - Ph  
16 (360) 586-3593 - Fx  
17 anne@atg.wa.gov

16 ☒ By United States Mail  
17 ☐ By Legal Messenger  
18 ☐ By Facsimile  
19 ☐ By Federal Express/Express Mail  
20 ☒ By E-mail

Adam Torem  
Administrative Law Judge  
Office of Administrative Hearings  
Olympia Field Office - SHS  
P.O. Box 42489  
Olympia WA 98504-2489  
(360) 753-2531- Ph  
(360) 586-6563- Fx  
atore@oah.wa.gov

☒ By United States Mail  
☐ By Legal Messenger  
☐ By Facsimile  
☐ By Federal Express/Express Mail  
☒ By E-mail

Erin L. Anderson  
Attorney at Law  
Cone Gilreath Law Offices  
200 E. Third  
P.O. Box 499  
Ellensburg WA 98926  
(509) 925-3191- Ph  
(509) 925-7640- Fx  
eanderson@eburglaw.com

☒ By United States Mail  
☐ By Legal Messenger  
☐ By Facsimile  
☐ By Federal Express/Express Mail  
☒ By E-mail



1 F. Steven Lathrop  
2 Lathrop, Winbauer, Harrel, Slothower &  
3 Denison L.L.P.  
4 1572 Robinson Canyon Road  
5 P.O. Box 1088  
6 Ellensburg WA 98926  
7 (509) 925-5622 - Ph  
8 (509) 925-3861 - Fx  
9 steve@lwhsd.com

10 [x] By United States Mail  
11 [ ] By Legal Messenger  
12 [x] By Facsimile  
13 [ ] By Federal Express/Express Mail  
14 [x] By E-mail

15 James L. Hurson  
16 Kittitas County Deputy Prosecutor  
17 Kittitas County Courthouse - Room 213  
18 Ellensburg WA 98926  
19 (509) 962-7520 - Ph  
20 (509) 962-7022 - Fx  
21 jamesh@co.kittitas.wa.us

22 [x] By United States Mail  
23 [ ] By Legal Messenger  
24 [ ] By Facsimile  
25 [ ] By Federal Express/Express Mail  
26 [x] By E-mail

27 DATED this 15<sup>th</sup> day of October, 2004, at Seattle, Washington.

28 s/ Daniel P. Draheim  
DANIEL P. DRAHEIM

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